United States Court of Appeals

for the Second Circuit

APPENDIX

10/2

74-1812

B

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

ELENA CLASS, et al
Plaintiffs, Appellees

v.

NICHOLAS NORTON, et al
Defendants, Appellants

JOINT APPENDIX

ROBERT K. KILLIAN, ESQ.
Attorney General
30 Trinity Street
Hartford, Connecticut

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Rockville, Conn.
Attorneys for Plaintiff-Appellees

3

LIST OF PARTS OF RECORD CONTAINED HEREIN

STATE OF CONNECTICUT

ROBERT K. KILLIAN
ATTORNEY GENERAL

Tel. 566-7014

ATTORNEY GENERAL'S OFFICE
[redacted]

90 Brainard Road
Hartford, Connecticut 06114

September 26, 1974

A. Daniel Fusaro, Clerk
United States Court of Appeals
Foley Square
New York, New York

Re: 74-1812
Elena Class, et al
v.
Nicholas Norton, et al

Dear Mr. Fusaro:

Enclosed please find 25 copies of the Brief in the above-mentioned case.

Very truly yours,

Robert K. Killian
Attorney General
By Edmund C. Walsh (ffc)
Edmund C. Walsh
Assistant Attorney General

ECW/ffc

Enclosure

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ELENA CLASS, ET AL PLAINTIFFS-APPELLEES	:	
V.	:	NO. 74-1812
NICHOLAS NORTON, ET AL DEFENDANTS-APPELLANTS	:	

CERTIFICATION

I hereby certify that on the 26th day of September, 1974, I served two copies of the Brief of Appellant and Joint Appendix by depositing it in the mails to the following:

Attorney Marilyn Katz, Bridgeport Legal Services, 412 East Main Street, Bridgeport, Connecticut

Attorney James Sturdevant, Tolland-Windham Legal Assistance, P. O. Box 358, Rockville, Connecticut

ROBERT K. KILLIAN
ATTORNEY GENERAL

BY Edmund C. Walsh
EDMUND C. WALSH
Attorney for Defendants-Appellants

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RELEVANT CIVIL DOCKET ENTRIES

Class v. Norton

HONORABLE M. JOSEPH BLUMENFELD

United States District Court

12-6-1971

Complaint, Motion for Preliminary Injunction, Motion to Proceed in Forma Pauperis and Order endorsed, thereon as follows: "Motion granted on basis of affidavits appended to complaint. Dec. 2, 1971" Blumenfeld, J., filed and entered.

12-29-1972

Answer, filed in Hartford.

6-6-1972

Memorandum for the United States as Amicus Curiae, filed in Hartford.

6-16-1972

Memorandum of Decision, Findings of Fact and Conclusions of Law entered. The court finds that the defendants are not in compliance with section 206.10(a)(3), *supra*, because they have not made determinations of eligibility within the required 30-day period. Lax administration provides no justification for this delay in determining eligibility. The defendants are thus ordered to comply with section 206.10(a)(3), on penalty of the withdrawal of federal funds for the AFDC program in Connecticut. Where the delay is not permissible under the regulation, applicants will be presumed eligible and assistance checks mailed accordingly, within the 30-day period. On penalty of withholding federal funds, the defendants are enjoined from enforcing those provisions of Manual section 370.2 which provide for different effective dates of assistance for recipients whose eligibility is determined in a month subsequent to the month of application, or

more than 30 days after the date of application. The defendants are ordered to make assistance effective from a date no later than the date of application for all AFDC recipients, whatever the date of determination of eligibility. Cf. *Ewing* v. *Gardner*, 185 F. 2d 781 (6th Cir. 1950) (Social Security benefits to run from date of application); *contra, Jordan* v. *Swank*, CCH Pov. L. Rep. par. 14,266 (N.D. Ill. 1972). Blumenfeld, J. Copies to all counsel. M-6-21-72.

6-22-1972

Addendum to Memorandum of Decision and Order, entered. The defendant White is further ordered to submit bi-monthly reports of the number of applications which have been pending for more than 30 days from the entering of judgment in this case until July 1, 1973. Finally, AFDC benefits retroactive to the date of application are ordered to be paid to all recipients whose applications have been approved since the filing of this suit, only to the extent that emergency town welfare benefits received by these recipients were less than the AFDC payments. Since many AFDC recipients are granted town welfare benefits pending the determination of eligibility under the the state program, these recipients are not entitled to the windfall of double payments for any period. SO ORDERED. Blumenfeld, J. M-6-22-72. Copies to all counsel. (*pending AFDC applications including the number of).

6-29-1972

Judgment entered in accordance with Memorandum of Decision and Addendum thereto. Earl, C. Approved: Blumenfeld, J. M-6-29-1972. Copies mailed to all counsel.

3-16-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

4-5-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

5-11-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

7-19-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

9-4-1973

Motion for Relief from Judgment, Notice of Motion and Memorandum of Law in Support of Motion, filed by defendant.

9-11-1973

Hearing on Defendant's Motion for Relief from Judgment. Copy of new HEW Regulations, filed by Defendant. Decision Reserved. Blumenfeld, J. M-9-13-1973.

1-4-1974

Motion for Contempt and Other Relief, filed by plaintiffs at Hartford.

3-22-1974

Ruling on Plaintiffs' Motion for Contempt and Other Relief, entered. Defendants ordered to take certain steps, within 15 days of the date of this order, to properly implement the prior orders of this Court, etc. In addition the defendant Commissioner shall submit monthly reports to this Court, with copies to counsel for the plaintiffs, detailing the processing of AFDC applications. The Court finds that the value of the time necessarily expended by the attorneys for the plaintiffs is in excess of $1,000. Accordingly, within 15 days from the date of this order, the defendant Norton shall, as Commissioner of Welfare and in his individual capacity, pay costs and at-

torneys' fees for the prosecution of this motion in the amount of $1,000 to Fairfield County Legal Services, Inc., plaintiffs' attorneys, such amount to be divided equally between the two legal services programs. SO ORDERED. BLUMENFELD, J. M-3-25-74. Copies mailed from Hartford.

4-3-74

Notice of Appeal from Ruling on Plaintiffs' Motion for Contempt and Other Relief, filed by Defendant. Copies mailed.

4-4-1974

Application for Partial Stay Order, Notice of Hearing and Memorandum in Support of Application, filed by Defendant, at Hartford.

4-5-1974

Hearing on Application for Partial Stay of Order of 3-22-74 continued. Court will consider an application for enlargement of time to pay costs of attorneys' fees — when requested by Def. Blumenfeld, J. M-4-8-74.

4-9-1974

Motion for Enlargement of Time in Which to Comply with the Orders entered in the Court's Ruling on Plaintiffs' Motion for Contempt and Other Relief, Dated March 22, 1974 and Notice of Hearing, filed at Hartford. Order entered that as to that portion of the Judgment and Order of the Court dated March 22, 1974, which requires the defendant to pay $1,000 attorneys' fees and costs to plaintiff within 15 days of the date of said order, the time for compliance is extended to May 6, 1974. Blumenfeld, J. M-4-10-1974. Copies mailed.

4-29-1974

Hearing on Defendant's Motion for Partial Stay Order. Plaintiff's Brief in Opposition to Defendant's Application for Partial Stay Order, filed. 1 Defendant's witness (Anthony

DiNallo) sworn and testified. Decision Reserved. Blumenfeld, J. M-4-30-1974.

5-3-1974

Order entered extending the time for compliance by defendant of $1,000 attorneys' fees and costs to plaintiff, from May 6, 1974 to May 13, 1974. Blumenfeld, J. Copies mailed from Hartford. M-5-7-1974.

5-7-1974

Motion to Extend Time for Transmitting Record to the Court of Appeals, to and including May 27, 1974, filed by Defendant. Order entered thereon granting same. Blumenfeld, J. Copies mailed from Hartford. M-5-15-74.

5-13-1974

Ruling on Defendant Norton's Motion for Relief from Judgment and Application for Partial Stay Order, entered. The Motion for Relief from Judgment and the Application for Partial Stay Order are denied. The Motion for Relief from Judgment is denied without prejudice and the Defendant may renew the motion when he can show himself and his Department to be in compliance with this Court's prior orders. So Ordered. Blumenfeld, J. M-5-14-74. Copies given to ATTYS. Walsh, Katz & Sturdevant by Hartford Office. Copies mailed to other counsel.

*5-2-1974

Motion for Enlargement of Time in Which to Comply with the Orders entered in the Courts ruling on Plaintiff's Motion for Contempt and Other Relief, dated 3-22-74 and Notice of Motion, filed by defendant at Hartford.

6-7-1974

Notice of Appeal from Ruling on defendant Norton's Motion for Relief from Judgment and Application for Partial Stay

Order entered 5-13-74, filed by defendant. Copies mailed to all counsel and to clerk, U.S.C.A.

7-19-1974

Letter from Nicholas Norton, Commissioner, continuing compliance with Court Order to review all active and inactive AFDC cases granted between Dec. 1, 1971, and June 1, 1972, filed.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al

v.

HENRY C. WHITE, COMMISSIONER of Welfare, State of Connecticut, et al

MEMORANDUM OF DECISION FINDINGS OF FACT and CONCLUSIONS OF LAW

In this case the plaintiffs challenge regulations and practices of the defendant, the Connecticut Commissioner of Welfare,[1] with respect to the determination of eligibility for welfare assistance under the state program of Aid to Families with Dependent Children (AFDC), as violative of valid regulations of the Department of Health, Education and Welfare (HEW) and of the equal protection clause of the fourteenth amendment of the United States Constitution. A cause of action is thereby stated under 42 U.S.C. § 1983 and jurisdiction is provided by 28 U.S.C. § 1343(3).

The plaintiffs sue on behalf of themselves and all other needy mothers, supervising relatives and dependent children in Connecticut who have applied for AFDC assistance but whose applications have not been processed for more than 30 days after the date of application. The court finds that this class satisfies the requirements of Fed., R.Civ.P. 23(a) and (b) (2).

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[1]Although the complaint also names a district director of welfare as a defendant, the state regulations are promulgated solely under the authority of the defendant White.

The plaintiffs challenge two aspects of the AFDC program in Connecticut. First, they challenge the practice of the defendants of delaying in a substantial number of cases the determination of eligibility for more than 30 days after the date of application, through no fault of the applicant, as violative of 45 C.F.R. § 206.10. Second, they challenge the classifications promulgated by the defendant White, to govern the date from which assistance is granted, in cases where the determination of eligibility is made more than 30 days after the date of application, Connecticut State Welfare Manual, Vol. 1 (hereinafter Manual) §370.2, as violative of HEW regulations, 45 C.F.R. § 205.120, 205.130, 233.10, 233.20, and of the equal protection clause of the fourteenth amendment. At the invitation of the court, HEW entered this case as amicus curiae and filed a brief setting forth its position with respect to the claims under HEW regulations. The claims will be considered separately.

I. DELAYED DETERMINATION

Title 45 C.F.R. § 206.10(a) (3) provides:

> "A decision will be made promptly on application, pursuant to reasonable State-established time standards not in excess of 30 days for . . . AFDC . . . Under this requirement, the applicant is informed of the agency's time standard in acting on applications, which covers the time from the date of application to the date that the assist ance check, or notification of denial of assistance or change of award, or the eligibility decision with respect to medical assistance, is mailed to the applicant or recipient. The State time standards apply except in unusual circumstances (e.g.,) where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be

> controlled by the agency, in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility may not be used as a basis for denial of an application or for terminating assistance."

The defendants have conceded that at present and during the last several years about half of all pending AFDC applications have been pending more than 30 days from the date of application, and that many have been pending more than 60 days. Employees of the defendant White testified that, while some of these cases were delayed beyond the required 30-day period because of failure on the part of the applicant, many were delayed because of tardy administration.

The only permissible reasons for delay beyond the 30-day period are those set forth in § 206.10(a) (3):

> "where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency, in which instances the case record shows the cause for the delays."

Shortage of personnel or change of administrative procedures is not a sufficient reason under this regulation for delay beyond 30 days.[2] The regulation is specific that the 30-day maximum period covers:

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[2]The defendant White's employees testified that a major cause of delay is the department's unwritten requirement that AFDC applicants personally visit the Family Relations Office of the Circuit Court, and that no action be taken on the application until the court sends a form acknowledging the visit. This requirement is not a valid reason for delay under § 206.10(c)(3). Family relations officers, with the aid of the defendant White, are authorized to institute proceedings for support, without the consent of the welfare recipient. Conn. Gen. Stats. § 17-32(c) (1969 Supp.). Burdens in connection with such proceedings cannot be shifted to the applicants on penalty of delayed eligibility determinations.

> "the time from the date of application to the date that the assistance check, or notification of denial of assistance . . . is mailed to the applicant . . . ." 45 C.F.R. § 206 (a) (3).

The court finds that the defendants are not in compliance with § 206.10(a) (3), *supra,* because they have not made determinations of eligibility within the required 30-day period. Lax administration provides no justification for this delay in determining eligibility. The defendants are thus ordered to comply with § 206.10(a) (3), on penalty of the withdrawal of federal funds for the AFDC program in Connecticut.

Where the delay is not permissible under the regulation applicants will be presumed eligible and assistance checks mailed accordingly, within the 30-day period. Cf. *Like* v. *Carter,* 448 F.2d 798 (8th Cir. 1971), *cert. denied,* 40 U.S. L.W. 3484 (U.S. Apr. 3, 1972): *Rodriguez* v. *Burak,* 318 F.Supp. 289, CCH Pov. L. Rep. par. 12,345 (N.D. Ill. 1970), *aff'd,* 403 U.S. 901 (1971), CCH Pov. L.Rep. par. 14,267 (N.D. Ill. 1972).

II. RETROACTIVE PAYMENTS

The plaintiffs' second claim is that the defendant White's policy of making payments retroactive only to the thirty-first day after the date of application to those recipients whose determination of eligibility was made more than 30 days after the date of application violates HEW regulations and the equal protection clause. The state policy for determining the effective date of assistance is as follows:

(1) Where the determination of eligibility is made in the same month that the application was filed, the initial award payment is authorized as effective from the date of application.

(2) Where the determination of eligibility is made within 30 days, but in a month subsequent to the month of applica-

tion, assistance is authorized as effective from the first of the month following the date of application.

(3) Where the determination of eligibility is made more than 30 days from the date of application, assistance is authorized as effective from the thirty-first day after the date of application. Manual § 370.2.

Thus, recipients whose eligibility is determined more than 30 days after the date of application are denied a full month's benefits.

The plaintiffs contend that the classification of recipients according to the date on which the welfare department makes the determination of eligibility is arbitrary and capricious, in violation of the equal protection clause and numerous HEW regulation. Title 45 C.F.R. § 233.20(a) (1) requires state AFDC programs to

> "Provide that the determination of need and amount of assistance for all applicants or recipients will be made on an objective and equitable basis . . . ."

The plaintiffs contend that the distinctions made by the defendant White in the amounts of assistance to recipients, on the basis of the date of the determination of eligibility are not "made on an objective and equitable basis," and hence violate § 233.20(a) (1), and similar HEW regulations requiring equitable treatment of recipients.

HEW takes the position that the three classifications for the effective date of assistance do not violate the "equitable treatment" doctrine of § 233.10(a)(1) on the ground that the regulation "arose from the history of the program." HEW states that while federal financial participation in AFDC programs is available from the first of the month of the application for assistance, 45 C.F.R. § 234.120, in former years federal

funding was available beginning only with the month of authorization of payment.

With due deference to the expert opinion of HEW, the court fails to see why this bit of history justifies the different treatment of AFDC recipients, simply because the determination of their eligibility occurs at different times. This difference in treatment of those who apply for assistance on the same date does not rest on any statutory classification; even if it did, such different treatment is lacking in rational justification. The defendants offer only administrative convenience as a reason for the different treatment. This reason is insufficient to justify the different treatment. Even where the delay in processing is caused by the applicant, once a determination is made that he is eligible for assistance, the amount of assistance which he will receive is simply a matter of bookkeeping, the defendants have shown no justification for making assistance effective as of later dates for those recipients whose applications were delayed in processing. The defendant White's policy for retroactive payments, Manual § 370.2, is arbitrary and capricious, and results in inequitable treatment of the plaintiffs. As such, it is violative of 45 C.F.R. § 233.20(a)(1) and the equal protection clause of the fourteenth amendment.

On penalty of withholding federal funds, the defendants are enjoined from enforcing those provisions of Manual § 370.2 which provide for different effective dates of assistance for recipients whose eligibility is determined in a month subsequent to the month of application or more than 30 days after the date of application. The defendants are ordered to make assistance effective from a date no later than the date of application for all AFDC recipients, whatever the date of determination of eligibility. Cf. *Ewing* v. *Gardner*, 185 F.2d 781 (6th

Cir. 1950) (Social Security benefits to run from date of application); *contra, Jordan* v. *Swank,* CCH Pov. L. Rep. par. 14,266 (N.D. Ill. 1972).

The foregoing constitutes the court's findings of fact and conclusions of law. Fed.R.Civ.P. 52(a).

Dated at Hartford, Connecticut, this 16th day of June, 1972.

M. JOSEPH BLUMENFELD
Chief Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al.

v.

HENRY C. WHITE, Commissioner of Welfare,
State of Connecticut, et al.

ADDENDUM TO MEMORANDUM OF DECISION AND ORDER

In order to insure compliance with the order of the court, and to prevent insubstantial motions for contempt in individual cases, the defendant White is further ordered to submit bi-monthly reports of the number of pending AFDC applications, including the number of applications which have been pending for more than 30 days from the entering of judgment in this case until July 1, 1973.

Finally, AFDC benefits retroactive to the date of application are ordered to be paid to all recipients whose applications have been approved since the filing of this suit, only to the extent that emergency town welfare benefits received by these recipients were less than the AFDC payments. Since many AFDC recipients are granted town welfare benefits pending the determination of eligibility under the state program, these recipients are not entitled to the windfall of double benefits for any period.

SO ORDERED.

Dated at Hartford, Connecticut, this 21st day of June, 1972.

M. JOSEPH BLUMENFELD
Chief Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al.

v.

HENRY C. WHITE, Commissioner of Welfare,
State of Connecticut, et al.

JUDGMENT

This cause having come on for hearing on plaintiffs' motion for preliminary injunction and hearing on the merits and the Court having rendered its Memorandum of Decision, Findings of Fact and Conclusions of Law under date of June 16, 1972 and Addendum to Memorandum of Decision and Order under date of June 22, 1972,

IT IS ORDERED, ADJUDGED AND DECREED:

(1) That the plaintiffs' suit brought in behalf of the designated class satisfies the requirement of Fed. R. Civ. P. 23(a) and (b) (2);

(2) That the defendants hereby comply with Title 45 C.F.R. § 206.10 (2)(3) with respect to the determination of eligibility for welfare assistance under the state program of Aid to Families with Dependent Children on penalty of the withdrawal of federal funds for the said AFDC program in Connecticut;

(3) That the defendants be and are hereby enjoined from enforcing those provisions of Manual § 370.2 which provide for different effective dates of assistance for recipients whose eligibility is determined in a month subsequent to the month

of application or more than 30 days after the date of application;

(4) That the defendants hereby make assistance effective from a date no later than the date of application for all AFDC recipients, whatever the date of determination of eligibility;

(5) That the defendant Henry C. White, Commissioner of Welfare, submit bi-monthly reports to the Court of the number of pending AFDC applications, including the number of applications which have been pending more than 30 days from the entering of judgment in this case until July 1, 1973; and

(6) That retroactive to the date of application AFDC benefits be paid to all recipients whose applications have been approved since the filing of this suit, only to the extent that emergency town welfare benefits received by these recipients were less than the AFDC payments.

Dated at Hartford, Connecticut, this 26th day of June, 1972.

GILBERT C. EARL
Clerk, United States District Court

BY FRANCES J. CONSIGLIO
Deputy In Charge

APPROVED:

M. JOSEPH BLUMENFELD
Chief Judge, U.S. District Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL NO. 14764

ELENA CLASS, et al

v.

HENRY C. WHITE, Commissioner of Welfare,
State of Connecticut, et al

MOTION FOR RELIEF FROM JUDGMENT

The defendant's successor in office, Nicholas Norton, moves for relief, pursuant to Rule 60(3)(5) and (6) of the Federal Rules of Practice from a judgment dated June 26, 1972, granting a permanent injunction against the defendant, Henry White.

The defendant makes the motion for the following reason:

That the regulation 45 C.F.R. 206.10 on which the injunction was based has been amended in 38 Federal Register 22,009, dated Wednesday, August 15, 1973 and effective October 15, 1973, or earlier at the option of the state.

THE DEFENDANT

BY EDMUND C. WALSH
Attorney for the Defendant

Edmund C. Walsh
Assistant Attorney General
76 Meadow Street
East Hartford, Conn. 06108

CERTIFICATION

I hereby certify that on the 30th day of August 1973, I served a copy of the foregoing Motion for Relief from Judgment by depositing it in the mails to the following:

John M. Creane, Esquire
Trowbridge & Creane
285 Golden Hill Street
Bridgeport, Connecticut 06604

Ira Horowitz, Esquire
412 East Main Street
Bridgeport, Connecticut 06603

EDMUND C. WALSH
Attorney for the Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al.

v.

NICHOLAS NORTON, Successor to Henry C. White, individually and as Commissioner of the State of Connecticut Welfare Department, et al.

RULING ON PLAINTIFFS' MOTION FOR CONTEMPT AND OTHER RELIEF

On June 16, 1972, a Memorandum of Decision in the instant case was filed ordering the defendant Connecticut Commissioner of Welfare to comply with applicable federal regulations by determining the eligibility of applicants for welfare assistance under the state program of Aid to Families with Dependent Children (AFDC) within 30 days from the date of application for assistance. If no determination of eligibility were made by the end of the 30-day period, the Commissioner was ordered to presume that the applicant was eligible for assistance and to mail assistance checks accordingly. The Commissioner was further ordered to make assistance effective from a date no later than the date of application for assistance, whatever the date of determination of eligibility. An Addendum to the Memorandum of Decision was filed on June 22, 1972, in which the Commissioner was further ordered to submit bi-monthly reports of the number of pending AFDC applications, including the number of applications which were pending for more than 30 days. The Addendum also specified that AFDC benefits retroactive to the date of application for all recipients whose applications were approved since the filing of this suit were to be paid only to the extent that emergency town welfare benefits received by the recipients were less than

the AFDC benefits. The plaintiffs have now moved that the defendant Commissioner of Welfare be adjudged in contempt of this Court for failure to comply with this Court's orders of June 16 and June 22, 1972.

I. THE EFFECTIVENESS OF THE IMPLEMENTATION OF THIS COURT'S ORDERS OF JUNE 16 AND JUNE 22, 1972

The evidence introduced by the plaintiffs at the hearing on this motion and submitted in the form of affidavits clearly demonstrates that this Court's orders of June 16 and June 22, 1972, have not been effectively implemented. Indeed, the defendants do not dispute this conclusion; rather, they maintain that they have taken all reasonable steps to implement this Court's orders within the practical limitations of existing budgetary and personnel constraints. While I am unwilling to infer willful disobedience of this Court's orders on the part of the defendants, I am disturbed at the extent to which those orders have not been effectively implemented. The evidence demonstrates that the non-compliance has been substantial and widespread. The Welfare Department's own bi-monthly reports indicate that during the period July 1972 through June 1973, substantial numbers of AFDC applications were not acted upon within 30 days, totaling 1,386 during the 12-month period. Applications pending longer than 30 days constituted a significant proportion of all applications pending at the end of each month, ranging in percentage from 29.6% to 12.3% and averaging 18.1%. There has apparently been some progress in processing of applications, since the number of applications pending longer than 30 days has decreased somewhat in recent months. However, the plaintiffs have submitted affidavits of welfare recipients indicating that delays of 40 days and more have occurred with no final determination of eligibility. In some instances applicants for assistance were not even given appointments with welfare workers at which applications

could be completed until more than 30 days after their initial requests for assistance.

Moreover, the plaintiffs have submitted affidavits indicating that at least in some cases the Welfare Department has refused, in making retroactive payments, to make assistance effective from the date of application for assistance.

These recipients have been fortunate in receiving the assistance of Legal Services counsel; the Court can only speculate about the number of people who lost benefits to which they were entitled for failure to challenge the improper actions of the Welfare Department.

There appear to be several factors contributing to the ineffective implementation of this Court's orders. At the hearing on this motion, Anthony DiNallo, Assistant Chief of Eligibility Services of the Connecticut Welfare Department, and John J. Hayes, District Supervisor of Intake in the Manchester District Office of the State Welfare Department, both indicated in their testimony that delays in paying retroactive benefits and in processing pending applications could be traced to a lack of sufficient numbers of office personnel.[1] In the order of June 16, 1972, however, it was stated, "Lax administration provides no justification for this delay in determining eligibilty." The point is no less true now: non-compliance with this Court's orders will not be excused because the Welfare Department has failed to assign sufficient personnel to the task. No departmental economies are realized by maintaining a backlog of unfinished work — only unjustified delay in the completion of it. And

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[1]Mr. DiNallo testified that determinations of eligibility for retroactive payments in currently *active* cases could be done quickly, since the records are computerized. Eligibility determinations for *inactive* cases, however, would take a considerable amount of time, since the records are not computerized and the review process requires hand-screening of approximately 160,000 status cards on all categories of welfare recipients.

this is clearly to the detriment of the intended beneficiaries. Furthermore, it results in greater out-of-pocket cost to the state because the reimbursement to towns for assistance they provide is not shared by the federal government under the federally-funded state welfare plan. It is obvious that the sooner town assistance is supplanted by federally-shared assistance, the less the drain on the state's funds.

A second factor contributing to the ineffective implementation of this Court's orders appears to be the specific procedures utilized by local offices of the State Welfare Department in processing applications for assistance, a factor which may be attributed to a misunderstanding of the requirements of this Court's orders on the part of Welfare Department personnel. The plaintiffs submitted affidavits indicating that in the Bridgeport office of the State Welfare Department two weeks is the average period of time between an applicant's initial request for assistance and the date of appointment with a welfare worker, at which time the application could be completed. This two-week period is purportedly not due to failure of the applicant to furnish necessary information, but rather for "administrative convenience." After the application is completed, the welfare worker must verify the information given, fill out other required forms, and secure the approval of eligibility from a supervisor, a process which generally takes another two weeks. After approval by the supervisor, further processing by the Welfare Department consumes another two weeks before the first assistance check is mailed to the applicant. This six-week period between initial application and mailing of first AFDC checks is at odds with both the spirit and letter of this Court's prior orders. There is some indication that the local supervisor erroneously believes that the 30-day requirement only applies to the period between initial application for assistance and approval of eligibility by the supervisor. The supervisor thus believes his office to be in

compliance with this Court's prior orders. He is mistaken. The order of June 16, 1972, makes it clear that the 30-day period is to be measured from the date of application for assistance to the date that the first assistance check (or notification of denial of assistance) is mailed to the applicant.

The apparent misunderstanding of this Court's prior orders has been exacerbated by the promulgation of two directives by the Welfare Department, on May 4, 1973, and on December 4, 1973. The May 4 directive provides that in the case of retroactive payments to a recipient who did not receive emergency town assistance, where the retroactive check exceeds the amount budgeted for the current month in addition to one previous month, prior authorization must be secured from the district director. The district director will provide such authorization only when the Intake Worker has *verified and recorded* "that need did, in fact, exist, specifying clearly what the unmet needs were: e.g., shelter, utilities, food, etc." The directive further provides that where recipients did receive emergency town assistance, if, after deducting the amount of town assistance, the payment exceeded $250, it must be verified and clearly specified "what the recipient's unmet needs were and what period of time they cover . . . ." The directive dated December 4, 1973, attempted to clarify the earlier directive by stating that "a client should be notified that for *30 days* within receipt of a retroactive check, the amount over $250 will not be considered an asset. After thirty days, however, if the recipient retains money in excess of $250, he will be ineligible until he disposes of the excess amount."

The plaintiffs claim that these directives establish a policy whereby the Welfare Department absolutely denies retroactive payments to recipients absent proof of "unmet needs" and arbitrarily limits the amount of retroactive payments to $250 for those who received emergency town assistance, absent

proof of unmet need. They claim that this policy is in "direct defiance" of this Court's prior orders.

The defendant Commissioner of Welfare maintains that the requirement of verification of unmet needs carries out the duty imposed upon him by the Social Security Act, which requires that ". . . the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . ." 42 U.S.C. § 602(a) (7). The Commissioner claims that the limitation amount of $250 is justified as a means of insuring that recipients properly meet welfare eligibility standards. The Assistant Attorney General representing the Commissioner conceded at the hearing on this motion that if the Welfare Department directives were interpreted by Department personnel as putting the burden upon the *recipient* to justify retroactive payments by demonstrating "unmet need," then Department policy would be violative of this Court's prior orders.

Efforts by the Commissioner to comply with the legal mandate imposed by the Social Security Act are, of course, justified and commendable. However, the affidavits and exhibits submitted by the plaintiffs indicate that even where a fair hearing officer recognized that there was unreasonable delay by the Department in determining eligibility, he nevertheless denied retroactive payments because "unmet needs" had not been demonstrated by the recipient. Thus at least some Department personnel have interpreted Department policy as placing the burden on the recipient to justify the retroactive payments.[2]

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[2]The fair hearing decision in one particular case noted by plaintiffs was rendered on April 4, 1973, before the Department's directives were issued. It is not clear, however, that the departmental policy of requiring verification of "unmet needs" was not in effect before the directives were issued, and correspondence submitted by the plaintiffs indicates that the problem in that particular case had not been resolved, and the recipient had not received retroactive payments, as late as November 27, 1973.

Insofar as they place a burden upon the recipient to justify the retroactive payments by demonstrating "unmet need" during the pendency of the application, the directives are violative of this Court's prior orders. If someone else without legal obligation to do so provides some assistance to prevent an applicant from starving, that is irrelevant to the defendant's obligation to provide assistance statutorily mandated. The Court notes that the requirements imposed upon the Commissioner by the Social Security Act with respect to proper determinations of eligibility may be carried out by enforcement of the appropriate state statutes, *i.e.*, Conn Gen. Stats. § 17-82d, under which the Commissioner makes periodic investigations to monitor eligibility, and Conn. Gen Stats. §§ 17-82m and 17-83i, which provide for civil actions to recover overpayments and for criminal prosecutions for fraud in obtaining welfare assistance, and by proper implementation of the provisions of the Welfare Department Manual relating to adjustments and reviews of recipients' eligibility, Manual, Vol. I, Ch. III, Index No. 2330.

Moreover, the plaintiffs' argument that imposition of a fixed dollar amount limiting retroactive payments constitutes a disincentive to the Department to process eligibility applications speedily is well taken. Without imputing any deliberate design to circumvent this Court's orders to Department personnel, it is nevertheless evident that a $250 limit on retroactive payments following delay in processing applications is likely to have this effect. In view of these circumstances, it is apparent that a clear statement of the Department's policy with respect to retroactive payments is presently needed.

II. RELIEF

Although the failure of compliance with this Court's prior orders on the part of the Department appears to have been substantial, I have concluded that the drastic remedies which plaintiffs seek — citation of the defendant Commis-

sioner for contempt and issuance of an injunction preventing use of federal funds for the AFDC program in Connecticut — would be inappropriate in the circumstances of this case at this time. *Compare Rosado* v. *Wyman,* 397 U.S. 397, 420-423, *on remand* 322 F.Supp. 1173, 1196 (E.D. N.Y.), *aff'd* 437 F.2d 619 (2d Cir. 1970), *aff'd* 402 U.S. 991 (1971); *Connecticut St. Dept. of Pub. W.* v. *Department of H.E.W.,* 448 F.2d 209 (2d Cir. 1971). It appears that much of the failure of compliance may have been the result of good faith attempts on the part of Department personnel to implement policies which were not sufficiently clarified by Department administrators. Nevertheless, continued non-compliance cannot and will not be tolerated, and I find it necessary to draw on the "broad discretionary power" of the trial court to fashion equitable remedies which are "a special blend of what is necessary, what is fair, and what is workable." *Lemon* v. *Kurtzman,* 411 U.S. 192, 200 (1973) (footnote omitted). Accordingly, within 15 days of the date of this order, the defendants are ordered to take the following steps to properly implement the prior orders of this Court:

(1) With respect to *inactive* cases involving persons who applied for AFDC benefits after December 1, 1971, the defendants shall assign at least four full-time office workers, in addition to any presently so assigned, to review Department records in order to determine whether such former recipients are currently eligible for retroactive welfare payments and to provide for the payment of such retroactive benefits. The defendant Commissioner shall submit monthly reports to this Court, with copies to counsel for the plaintiffs, specifying the number of such inactive cases which were reviewed by Department personnel during the prior 30 days in efforts to determine eligibility for retroactive payments, the number of persons who were found to be eligible for retroactive payments, and the number of such persons

who were paid retroactive payments by the Department during the prior 30 days.

(2) With respect to *active* cases involving persons who applied for AFDC benefits after December 1, 1971, the defendants shall immediately institute procedures by which Department records may be reviewed in order to determine whether such current recipients are eligible for retroactive welfare payments and shall provide for the payment of such retroactive benefits. Since these records are computerized, it is anticipated that the information may be readily obtained and the payments speedily made. Accordingly, the defendant Commissioner shall submit a report to this Court within 45 days of the date of this order, and shall submit a copy of such report to counsel for the plaintiffs, specifying the number of such active cases which were reviewed by the Department, the number of persons who were found to be eligible for retroactive payments, and the number of such persons who were paid retroactive payments by the Department.

(3) The defendant Commissioner shall issue a new directive to all Department personnel, with copies to counsel for plaintiffs, regarding retroactive payments and processing of AFDC applications. The directive shall state the following:

(a) Determinations of eligibility of AFDC applicants shall be made within 30 days from the date of application for assistance. This 30-day period is to be measured from the date of application for assistance, whether such application was made by telephone or in person in a Welfare Department office. It is *not* sufficient that applications are approved by district supervisors within 30 days: processing of applications is to be completed at district offices in time so that applications may be for-

warded for final approval and checks may be *mailed* within 30 days.

(b) If no determination of eligibility is made within 30 days, applicants are to be presumed eligible for assistance and AFDC checks are to be mailed accordingly, *i.e.*, at the end of the 30-day period. Assistance is to be effective from the date of initial application for assistance, whatever the date of determination of eligibility, and regardless of whether the initial application was by telephone or in person. For recipients who received emergency town assistance during the pendency of their AFDC applications, AFDC benefits retroactive to the date of application are to be paid only to the extent that such AFDC benefits exceed the amount of emergency town assistance benefits paid.

(c) The Department directives of May 4, 1973, and December 4, 1973 are hereby rescinded insofar as they place a burden upon a welfare recipient to demonstrate "unmet need" in order to receive retroactive AFDC payments or impose a specific dollar limitation on the amount of such retroactive payments. In no case shall any employee of the Department require proof of "unmet need" for an AFDC recipient before authorizing retroactive payments, whether or not the recipient received emergency town assistance during the pendency of the recipient's AFDC application, and regardless of the amount of such retroactive payments.

In addition, the defendant Commissioner shall submit monthly reports to this Court, with copies to counsel for the plaintiffs, detailing the processing of AFDC applications. The first such report shall be submitted not later than May 10, 1974, covering the month of April 1974, and the defendant Commissioner shall continue to submit such reports monthly until further order of this Court. Such reports shall include

the following information for each district office and for the state as a whole:

a. The number of applications brought forward from preceding months, the number received during the month and the total of the two, *i.e.*, the number on hand during the month;

b. The number of applications approved during the month, the number denied, the number transferred out and the total number of dispositions during the month;

c. The percent of applications disposed of within the time period (30 days);

d. The number of applications pending less than 30 days at the end of the month, the number pending 30 through 45 days, the number pending 45 through 60 days, the number pending more than 60 days, and the total of the four, *i.e.*, the total number of applications pending at the end of the month;

e. The number and percent of applications presumed eligible after failure to process in less than 30 days during the month; and

f. The number and percent of applications pending over 30 days due to failure of the applicant or the applicant's physician to submit the information required to establish eligibility during the month.

Plaintiffs' counsel have expended considerable effort in this case in presenting the legal issues and relevant evidence to this Court. They have diligently sought to protect the rights of their clients in the face of unjustified non-compliance with this Court's prior orders on the part of the defendants. The Court finds that the value of the time necessarily expended by

the attorneys for the plaintiffs is in excess of $1,000. Accordingly, within 15 days fro mthe date of this order, the defendant Norton shall, as Commissioner of Welfare for the State of Connecticut, and in his individual capacity, pay costs, and attorneys' fees for the prosecution of this motion in the amount of $1,000 to Fairfield County Legal Services, Inc., and Tolland-Windham Legal Assistance Program, Inc., plaintiffs' attorneys, such amount to be divided equally between the two legal services programs. *Doe* v. *Weaver*, No. 70-C-3084 (N.D. Ill., October 11, 1972, December 14, 1972); *Sprague* v. *Ticonic Bank*, 307 U.S. 161, 164-166 (1939); *Hall* v. *Cole*, 412 U.S. 1, 4-5 (1973). *Cf. Stanford Daily* v. *Zurcher*, 366 F.Supp. 18 (N.D. Calif. 1973); *Almenares* v. *Lavine*, 71 Civ. 3503 (S.D. N.Y. Nov. 29, 1973), C.C.H. Pov.L.Rptr. ¶ 18,317.

SO ORDERED.

Dated at Hartford, Connecticut, this 22nd day of March, 1974.

M. JOSEPH BLUMENFELD
Chief Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL NO. 14764

ELENA CLASS, et al

v.

NICHOLAS NORTON, Successor to Henry C. White, individually and as Commissioner of the State of Connecticut Welfare Department, et al

RULINGS ON DEFENDANT NORTON'S MOTION FOR RELIEF FROM JUDGMENT AND APPLICATION FOR PARTIAL STAY ORDER

The defendant Commissioner of Welfare has moved for relief, pursuant to Fed. R. Civ. P. 60(b)(5) and (6), from this Court's orders in this case of June 16 and June 22, 1972, on the ground that one regulation of the Department of Health, Education and Welfare (HEW) upon which those orders were based, 45 C.F.R. § 206.10, has recently been amended. See 38 Fed. Reg. 22009, dated August 15, 1973, effective October 15, 1973. The Commissioner has also applied for a partial stay of the orders of this Court entered on March 22, 1974, in its Ruling on Plaintiff's Motion for Contempt and Other Relief. In that Ruling, non-compliance by the defendants with this Court's previous orders was found to be "substantial and widespread," and the Court ordered specific procedures implemented in order to effect compliance with the orders. In the discussion which follows, familiarity with the previous orders of the Court in this case will be assumed.

The defendant presses his motion and his application particularly with an eye to the Supreme Court's recent opinion in *Edelman* v. *Jordan*, 42 U.S.L.W. 4419 (March 25,

1974). The facts in that case were similar to those in the instant case. Jordan had brought an action for declaratory and injunctive relief against the Illinois officials administering the federal-state Aid to the Aged, Blind and Disabled (AABD) programs, claiming that they were violating federal law and the Equal Protection Clause by following state regulations which did not comply with federal time limits for processing AABD applications. The district court entered a permanent injunction requiring compliance with the federal time limits and also ordered the state officials to release and remit AABD payments wrongfully withheld from eligible persons who had applied for benefits between July 1, 1968, the date of the federal regulations, and April 16, 1971, the date of the court's preliminary injunction. The Court of Appeals affirmed holding that the Eleventh Amendment did not bar the award of retroactive benefits and that the judgment of inconsistency between the state and federal regulations could be given prospective effect only. The Supreme Court held, "Though a § 1983 action may be instituted by public aid recipients such as respondent, a federal court's remedial power, consistent with the Eleventh Amendment, is neccessarily limited to prospective injunctive relief, . . . and may not include a retroactive award which requires the payment of funds from the state treasury." 42 U.S.L.W. at 4427. The defendant Commissioner of Welfare contends that the ruling in *Edelman* v. *Jordan* compels the granting of both the motion for relief from judgment and the application for a partial stay order.

A. The Motion for Relief from Judgment

The defendant points to two provisions of the amendments to the HEW regulation as being inconsistent with this Court's prior orders. In the order of June 16, 1972, in accordance with 45 C.F.R. § 206.10 as it then provided, this Court directed that determination of eligibility regarding applicants for AFDC benefits be made within 30 days of the

initial application for assistance. Section 206.10(a)(3)(i), as now amended, allows the State Welfare Department 45 days in which to make such determinations of eligibility. This Court's order of June 16, 1972, also required the State Welfare Department to make assistance effective from a date no later than the date of application for all AFDC applicants, whatever the date of determination of eligibility. Section 206.10(a)(6), as amended, now provides:

> "(6) Assistance shall begin as specified in the State plan, which:
>
> (i) For financial assistance
>
> (A) Must be no later than:
>
> (1) The date of authorization of payment, or
>
> (2) Thirty days in . . . AFDC . . . from the date of receipt of a signed and completed application form, whichever is earlier . . . ."

The defendant thus claims that "the State has the option when assistance shall begin, and in this case, the defendant will choose the date of 30 days from the date of a signed and completed application form."

The extensive non-compliance by the defendants with this Court's previous orders is a significant consideration in the determination whether relief under Fed. R. Civ. P. 60(b)(5) or (6) is appropriate. This Court recently discussed the law regarding such relief in its Ruling on Motion for Relief from Injunction in *Harrell* v. *Harder*, 369 F.Supp. 810, 813-814 (D. Conn. 1974):

> "It is clear beyond doubt that the Court has the *power* to modify its orders to adapt to changed conditions. *United States* v. *Swift & Co.*, 286 U.S. 106, 114, 52 S.Ct. 460, 76 L.Ed. 999 (1932). The crucial inquiry is whether

conditions which existed at the time the order was entered have changed sufficiently to justify the modification. The Court of Appeals for this circuit has construed the applicable provision of Rule 60(b)(5) as follows:

'The rule is not to be read without emphasis on the important words "no longer"; assuming that the propriety of the injunction as issued has passed beyond debate, it refers to some change in conditions that makes continued enforcement inequitable.'

Schildhaus v. *Moe*, 335 F.2d 529, 530 (2d Cir. 1964). Rule 60(b)(6) requires more than 'some change in conditions that makes continued enforcement inequitable'; relief is justified only in the case of 'extraordinary circumstances.' *Ackermann* v. *United States*, 340 U.S. 193, 199, 71 S.Ct. 209, 95 L.Ed. 207 (1950); *Klapprott* v. *United States*, 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1949)"

The changes in the HEW regulations do not constitute the "extraordinary circumstances" required for relief under Rule 60(b)(6). *Harrell* v. *Harder, supra*, 369 F.Supp. at 814. Moreover, the circumstances of this case indicate that relief under Rule 60(b)(5) would likewise be inappropriate. The defendants cannot seriously contend that they seek relief from "continued" enforcement of this Court's orders, *Schildhaus* v. *Moe, supra*, 335 F.2d at 530: their own reports on the number of applicants receiving eligibility determinations within the required 30 days, submitted in conjunction with the recent Motion for Contempt and Other Relief, indicate that compliance with this Court's orders has not yet been achieved, and thus could not be "continued." Nor would such relief be "equitable": the defendants' non-compliance with this Court's prior orders has been inexcusable and unjustified, and they cannot seek relief from this Court while their own hands are so unclean. *Frad* v. *Columbian National Life Ins.*

Co., 191 F.2d 22, 26 (2d Cir. 1951), *cert. denied* 342 U.S. 904 (1952).

That relief in the instant case at this time would be inappropriate is also indicated by Section 206.10(a)(5) of the amended regulation, which provides:

> "(5) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process . . . ."

At the hearing on the Motion for Contempt and Other Relief in this case, the defendants' own witnesses testified that the failure of the Welfare Department to process applications within the required 30 days and to make retroactive payments in compliance with this Court's prior orders was due to insufficient numbers of staff personnel and other "delay attributable to the agency's administrative process." In this Court's order of June 16, 1972, it was clearly stated: "Lax administration provides no justification for . . . delay in determining eligibility." In view of the defendants' record of non-compliance with this Court's prior orders, the Court is loath to speculate on the adversity to which wefare applicants might be subjected if the 30-day requirement were relaxed to 45 days or if the Welfare Department were not compelled to make assistance effective from the date of application rather than from the date of determination of eligibility.

Nor does the Supreme Court's opinion in *Edelman* v. *Jordan* compel a different conclusion. The Court recognized that its decision signaled a breakaway from earlier determinations involving awards of retroactive welfare benefits: the Court had in recent years summarily affirmed three district court judgments requiring state public assistance administrators to make retroactive payments, and the Court's opinion in *Shapiro* v. *Thompson*, 394 U.S. 168 (1969), affirmed the judg-

ment of a three-judge district court which had ordered the retroactive payment of welfare benefits which had been wrongfully withheld. *Edelman* v. *Jordan, supra,* 42 U.S.L.W. at 4424-4425. Yet changes in controlling decisional law occurring subsequent to the entrance of a court's order generally do not justify the granting of relief under Rule 60(b)(5) or (6). *Berryhill* v. *United States,* 199 F.2d 217 (6th Cir. 1952); *Collins* v. *City of Wichita, Kansas,* 254 F.2d 837 (10th Cir. 1958); *Title* v. *United States,* 263 F.2d 28 (9th Cir.), *cert. denied* 359 U.S. 989 (1959); *Lubben* v. *Selective Service System Local Bd. No.* 27, 453, F.2d 645, 650 (1st Cir. 1972).

Even if the Court's decision in *Edelman* v. *Jordan* were applicable in the instant case, it would not dictate the granting of relief. The two aspects of this Court's prior orders from which relief is sought in the Motion for Relief from Judgment, requiring eligibility determinations to be made within 30 days from the date of application for benefits and making assistance effective from a date no later than the date of application, constituted *prospective injunctive relief* to the plaintiffs. The Court in *Edelman* v. *Jordan* stated several times that the Eleventh Amendment is no bar to such relief. 42 U.S.L.W. at 4423, 4424, 4427. The Motion for Relief from Judgment does *not* seek relief from that part of this Court's prior orders which requires the defendant to make retroactive payments to all persons whose applications have been approved since the filing of this suit to the extent that emergency town welfare benefits received by those recipients were less than the AFDC payments to which they were entitled.[1]

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[1]The instant suit was filed on December 6, 1971. The orders of the Court were entered on June 16 and June 22, 1972. Thus the only "retroactive payments" to which *Edelman* v. *Jordan* could conceivably be applicable are those to recipients whose applications were approved subsequent to the date the suit was filed but prior to the date of this Court's orders.

B. The Application for Partial Stay Order

Inasmuch as the prior orders of this Court providing for prospective injunctive relief are not in any event susceptible to challenge under *Edelman* v. *Jordan,* see p. 7, *supra* the application for a partial stay order stands on but two slim reeds. First, the defendant argues that this Court's order of March 22, 1974, to the defendant Norton, in his official capacity as Commissioner of Welfare for the State of Connecticut, and in his individual capacity, to pay costs, and attorneys' fees in the amount of $1,000 to plaintiffs' attorneys, is barred by the Eleventh Amendment under *Edelman* v. *Jordan.* Our Court of Appeals recently considered a similar contention in *Jordan* v. *Fusari,* Dkt. No. 73-2364 (2d Cir. April 29, 1974). Although the case originally involved the constitutionality of the policy of the State of Connecticut of denying unemployment compensation to women in the months before and after childbirth, the suit was settled and the sole issue on appeal was the award of attorneys' fees to counsel for the plaintiff. The defendant was the Commissioner of Labor and Administrator of the Unemployment Compensation Act of the State of Connecticut, and thus in a position indistinguishable from that of the defendant in the instant case for purposes of the Eleventh Amendment issue. Judge Zampano held ten per cent of the benefits received by plaintiff's class to be an appropriate fee. The Court of Appeals remanded the case for further proceedings, but expressly noted that "a judgment imposing reasonable attorneys' fees on defendant" may well be justified, *id.* at 3067. The court's reference to *Edelman* v. *Jordan* made it clear that an allowance of attorneys' fees such as that awarded in the instant case is not barred by the Eleventh Amendment:

> "[I]t appears to us that the allowance awarded here, as part of an order granting injunctive relief, has at most

> the 'ancillary effect on the state treasury,' which *Edelman* v. *Jordan, supra,* 42 U.S.L.W. at 4424, characterizes as 'a permissible and often inevitable consequence of the principle announced in *Ex parte Young,*' 209 U.S. 123 (1908)."

Id. at 3068 footnote omitted).[2]

The remaining ground for the application for partial stay is the defendant's belief that *Edelman* v. *Jordan* should be applied retroactively and that upon such application the prior orders of this Court should be invalidated. Beyond noting that the Supreme Court's ruling regarding retroactive benefits could only apply to one aspect of this Court's prior orders, not heretofore challenged, see footnote 1 *supra,* it is sufficient to recall this Court's reply to a similar contention in *Campagnuolo* v. *White,* Civil No. 13,968 (D. Conn. Jan. 16, 1973), slip op. at 4:

> ". . . [I]t is extremely doubtful that the rule in *Rothstein* [v. *Wyman,* 467 F.2d 226 (2d Cir. 1972)] should be retroactively applied to modify judgments previously entered. While the court retains jurisdiction in some instances to alter its judgment in the event that the facts underlying the judgment have changed, cf. *United States* v. *Combustion Engineering,* Civil No. 13,398 (D. Conn. Dec. 19, 1972), 'the sound legal principle that litigation must at some point come to an end,' *Gondek* v. *Pan Am World Airways,* 382 U.S. 25, 30 (1965) (dissent of Harlan, J.), dictates that a 'plaintiff who loses his claim cannot reinstate his action when a rule of law favorable to him is declared, either by the legislature or the court.'

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[2]Furthermore, in the instant case the defendant Norton was ordered to pay the costs and fees in his official capacity and in his individual capacity. He would therefore be liable for the costs and fees in any event.

Weed v. *Bilbrey*, 400 U.S. 982, 984 (1970) (dissenting opinion)."[3]

Accordingly, the Motion for Relief from Judgment and the Application for Partial Stay Order are denied. The Motion for Relief from Judgment is denied without prejudice and the defendant may renew the motion when he can show himself and his Department to be in compliance with this Court's prior orders.

SO ORDERED.

Dated at Hartford, Connecticut, this 13th day of May, 1974.

United States District Judge
M. JOSEPH BLUMENFELD

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[3]Moreover, the Order of March 22, 1974, was in a ruling on a Motion for Contempt and Other Relief. This Court did not hold the defendant Commissioner in contempt, but instead supplemented its earlier orders in order to more effectively protect the rights of the plaintiffs. It is extremely unlikely that the defendant could attack the merits of the Orders of June 16 and June 22, 1972, by appealing the Order of March 22, 1974. The March 22, 1974, ruling was based not on the merits of the prior orders but on the failure of the defendants to comply with those orders.

Finally, because the grounds for the application for a partial stay are so insubstantial, the Court finds it unnecessary to consider at length the traditional showings required before a stay pending appeal will be granted. *See, e.g., Stop H-3 Association* v. *Volpe*, 353 F.Supp. 14, 16 (D. Ha. 1972). Even a cursory consideration of the defendant's position in the instant case indicates that he would be unable to make the required showings.